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COMMISSION  
OFFICIAL COUNSEL

**BEFORE THE FEDERAL ELECTION COMMISSION**

The Richard Burr Committee )

2004 NOV 16 P 4: 22

Timothy W. Gupton, Treasurer )

MUR 5577

P.O. Box 5928 )

Winston-Salem, NC 27113 )

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**INITIAL RESPONSE OF RESPONDENT BURR COMMITTEE**

On November 1, 2004, The Richard Burr Committee and its treasurer, Timothy W. Gupton (collectively, the "Committee") received notice from the Federal Election Commission ("Commission") of a complaint filed by one Thomas J. Strini of Mint Hill, North Carolina ("complaint"). Because the complaint fails to state a claim against the Committee, the Commission should find no reason to believe that a violation of the Federal Election Campaign Act of 1971, as amended (the "Act") has occurred, and should take no action against the Committee.

Though any person may file a complaint with the Commission, *see* 2 U.S.C. § 437g(a)(1); 11 CFR 111.4(a), complaints should "contain a clear and concise recitation of the facts which describe a violation of a statute or regulation." 11 CFR 111.4(d)(4). The complaint addresses a "flyer [Mr. Strini] received ... which appears ... to advocate the candidacy of Richard Burr." *See* Complaint. The complaint states that "the ad [in question] is paid for by the National Association of Realtors" and that "any reasonable individual *would consider the cost of producing and distributing this flyer to be a political contribution to Mr. Burr.*" *Id.* (Emphasis added). This is the totality of the so-called violation(s)

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alleged in the complaint.<sup>1</sup> The complaint presumes that the fact of publication, by itself, is sufficient to create either an impermissible or excessive contribution (or both) by the Realtors to the Burr Committee. But this is not true under Federal law. The Act recognizes the right of outside organizations to spend money for communications without automatically accruing regulable and reportable benefits to candidate committees. *See generally* 2 U.S.C. § 431(17) (independent expenditures); 2 U.S.C. §§ 434(f)(3); 441b(a) (disbursements for applicable electioneering communications); 2 U.S.C. §§ 431(9)(B)(i) (editorials). Contrary to the standard of 11 CFR 111.4(d), the complaint does not recite facts which describe a violation of the Act. As such, the Commission should find no reason to believe a violation exists and take no further action against the Committee.

An independent review of the flyer yields the same conclusion. Review of the National Association of Realtors' flyer suggests that it was a public communication made within 120 days of the 2004 general election, and paid for by an association, not a separate segregated fund or non-connected (political) committee. The only way that the Realtors' payment for such a communication can "exceed limits [or, more accurately, trigger prohibitions against corporate contributions] established by Campaign Finance Law," *see* Complaint, is if the payments were made in cooperation, consultation or concert with, or at the request

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<sup>1</sup> The complainant also asserts that "while [he has] no way to determine how much it cost to produce [the flyers, he has] no doubt that it exceeds limits established by Campaign Finance Law."

or suggestion of, the Committee or its agents. *See* 2 U.S.C. § 441a(a)(7)(B)(i); 11 CFR Part 109. But this did not occur.

Mr. Dean Myers, campaign manager to the Committee in the 2004 election cycle, has stated that neither he, nor any agent of the Committee, consulted with the Realtors or their agents in the development of the Realtors' communications. Affidavit of Dean Myers, ¶¶ 1 and 3, attached. Mr. Myers also stated that there was no communication by the Realtors made in cooperation or consultation with the Committee or its agents, and there was never any request or suggestion that the Realtors make any such communications. Affidavit of Dean Myers, ¶¶ 4 and 5, attached. As such, the Committee has not violated even the most generous reading of the complaint. The Commission has no basis to believe a violation has been committed by the Committee. The only actions proper to the Commission under 2 U.S.C. § 437g(a) are to find no reason to believe a violation exists, and take no further action against the Committee.

Respectfully submitted,



Timothy W. Gupton  
Treasurer, The Richard Burr Committee  
P.O. Box 5928  
Winston-Salem, North Carolina 27113-5928

State of North Carolina                    )  
  ) Affidavit of Dean Myers  
County of Forsyth                            )

AFFIDAVIT OF DEAN MYERS, individually and on behalf of The  
Richard Burr Committee ("Committee"), first being duly sworn,  
deposes and says:

1. I am Dean Myers. I was Campaign Manager for the  
Committee, the principal campaign committee of Senator-elect  
Richard Burr during the 2003-2004 election cycle.

2. After receiving a complaint against the Committee filed  
with the Federal Election Commission, I understand that the  
National Association of Realtors ("NAR") paid for and distributed  
print mailers that advocated the election of Richard Burr to the  
U.S. Senate.

3. Upon information and belief, I hereby state that neither  
I, nor any agent of the Committee, consulted with NAR or its  
agents in developing NAR's communications, whether by print,  
radio or television, including the printed communication at  
issue.

4. Furthermore, I state that I did not have substantial  
discussions with any employee of NAR throughout the election  
cycle, nor have consulted with NAR or provided any material  
information about the Committee's plans, projects or needs to  
NAR.

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5. No communication was made by NAR in cooperation or in consultation with the Committee, or its agents, and there was never any request or suggestion to do so.

The above is true and correct to the best of my knowledge.

Dean Myers  
Dean Myers

Signed and sworn to before me on this 15<sup>th</sup> day of November, 2004.

Lori L Livingston  
Notary Public

My Commission Expires:

